



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1992

Mr. Rodman C. Johnson
Staff Attorney
Legal Division
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

OR92-691

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 17930.

The Texas Air Control Board (the "board") has received a request for information relating to MERCO Joint Venture of Sierra Blanca, Texas. Specifically, the requestor seeks "certified copies of all the Texas Air Control Board's files" on the venture, including the following forms and their attachments:

Form ACB93A,	Filed 8/26/92
Form ACB94,	Filed 9/18/92
Form ACB94A,	Filed 8/12/92
Form ACB94A,	Filed 8/10/92

In addition, the requestor seeks "any other documents, forms or reports not listed above regarding the MERCO Joint Venture." You advise us that the board has made available to the requestor some of the requested information. You have submitted to us for review, however, some of the requested information and claim that sections 3(a)(3) and 3(a)(11) of the Open Records Act except it from required public disclosure.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

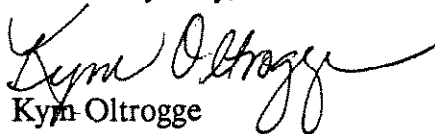
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990) at 4.

You advise us that the requested information relates to a lawsuit that the attorney general, acting on behalf of the board, has brought against MERCO Joint Venture. On that basis, we conclude that litigation is pending. We further agree with your conclusion that the requested information relates to the pending litigation. Accordingly, unless the board already has disclosed the requested information through the discovery process or by court order, the board may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. As we resolve this issue under section 3(a)(3) of the Open Records Act, we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-691.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/lmm

Ref.: ID# 17930